

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
AT&T Corporation)	IC No. 07-S0285279
)	
Complaint Regarding)	
Unauthorized Change of)	
Subscriber's Telecommunications Carrier)	

ORDER ON RECONSIDERATION

Adopted: May 15, 2008

Released: May 16, 2008

By the Chief, Consumer & Governmental Affairs Bureau:

1. In this Order, we deny a Petition for Reconsideration filed by AT&T Inc. on behalf of AT&T Corporation (AT&T) asking us to reverse a finding that AT&T changed the Complainant's telecommunications service provider in violation of the Commission's rules by failing to obtain proper authorization and verification.¹ On reconsideration, we affirm that AT&T's actions violated the Commission's carrier change rules.²

I. BACKGROUND

2. In December 1998, the Commission adopted rules prohibiting the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service.³ The rules were designed to take the profit out of slamming.⁴ The Commission applied the rules to all wireline carriers,⁵ and modified its existing requirements for the authorization and verification of preferred carrier changes.⁶

3. The rules require that a submitting carrier receive individual subscriber consent before a

¹ See Petition for Reconsideration of AT&T Inc. filed on behalf of AT&T Corporation (filed February 25, 2008) (*Petition*) seeking reconsideration of *AT&T Corporation; Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 23 FCC Rcd 1168 (CGB 2008) (*Division Order*), issued by the Consumer Policy Division (Division), Consumer & Governmental Affairs Bureau (CGB). We note that the caption of AT&T's *Petition* omitted a digit for the file number of Complainant's complaint.

² See 47 C.F.R. §§ 64.1100 – 64.1190.

³ See *id.*; see also 47 U.S.C. § 258(a).

⁴ See *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 1508, 1512, para. 4 (1998) (*Section 258 Order*). See also *id.* at 1518-19, para. 13.

⁵ See *id.* at 1560, para. 85. CMRS providers were exempted from the verification requirements. See *Section 258 Order* at 1560-61, para. 85.

⁶ See *Section 258 Order*, 14 FCC Rcd at 1549, para. 66.

carrier change may occur.⁷ Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.⁸

4. The Commission also adopted liability rules for carriers that engage in slamming.⁹ If the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change.¹⁰ Where the subscriber has paid charges to the unauthorized carrier, the unauthorized carrier must pay 150% of those charges to the authorized carrier, and the authorized carrier must refund or credit the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.¹¹

5. The Commission received a complaint on October 16, 2007, alleging that Complainant's telecommunications service provider had been changed from Primus Telecommunications (Primus) to AT&T without Complainant's authorization.¹² Pursuant to Sections 1.719 and 64.1150 of the Commission's rules,¹³ the Division notified AT&T of the complaint.¹⁴ In its response, AT&T stated that, due to a data processing error, it inadvertently neglected to include the Carrier Identification Code (CIC) on the access service request (ASR) order.¹⁵ AT&T further stated that, as a result, the local exchange carrier (LEC) did not open the reseller's CIC(s) and calls were sent across AT&T's network as if they were normal casual usage.¹⁶ The Division found that AT&T failed to produce clear and convincing evidence that Complainant authorized a carrier change and, therefore, that AT&T's actions resulted in an unauthorized change in Complainant's telecommunications service provider.¹⁷ AT&T seeks

⁷ See 47 C.F.R. § 64.1120. See also 47 U.S.C. § 258(a) (barring carriers from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures).

⁸ See 47 C.F.R. § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. 47 C.F.R. § 64.1130.

⁹ See 47 C.F.R. §§ 64.1140, 64.1160-70.

¹⁰ See 47 C.F.R. §§ 64.1140, 64.1160 (any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change).

¹¹ See 47 C.F.R. §§ 64.1140, 64.1170.

¹² Informal Complaint No. IC 07-S0285279, filed October 16, 2007.

¹³ 47 C.F.R. § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

¹⁴ See Notice of Informal Complaint No. IC 07-S0285279 to AT&T Corporation from the Deputy Chief, Division, CGB, dated October 19, 2007.

¹⁵ AT&T Corporation's Response to Informal Complaint No. IC-07-S0285279, received November 28, 2007. As noted in the *Division Order*, an ASR is an order request to the local exchange carrier on behalf of a reseller.

¹⁶ *Id.*

¹⁷ See 47 C.F.R. § 64.1150(d).

reconsideration of the *Division Order*.¹⁸

II. DISCUSSION

6. Based on the record before us, we affirm the *Division Order* and deny AT&T's *Petition*. As discussed below, AT&T violated the Commission's carrier change rules because its actions resulted in an unauthorized switch of Complainant's service provider.

7. The Commission has stated that executing carriers may be liable for failure to comply with the Commission's rules if their actions result in any unreasonable delay of execution of carrier changes or in unauthorized carrier changes.¹⁹ The Commission also imposed on facilities-based carriers the responsibilities of executing carriers in situations relating to carrier changes involving their resellers.²⁰ In its response, AT&T admits that, during a switch of trunks, it failed to properly open up the reseller's CIC.²¹ This failure by AT&T resulted in the Complainant being switched from the CIC of its authorized carrier, Primus, a reseller of AT&T, to AT&T, the reseller's underlying carrier.²² Such a switch requires proof of authorization to be submitted by AT&T,²³ and as the Division found, AT&T did not do so.²⁴

¹⁸ In an earlier proceeding, CGB denied a virtually identical petition for reconsideration filed by AT&T regarding the same issues present in this proceeding. See *Petition for Reconsideration of AT&T Inc. filed on behalf of AT&T Corporation* (filed December 21, 2007), seeking reconsideration of the Division's decision in *AT&T Corporation; Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 22 FCC Rcd 20687 (CGB 2007). See *AT&T Corporation; Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order on Reconsideration, DA 08-784 (CGB rel. April 2, 2008).

¹⁹ *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996, 16031 n.209 (2000).

47 C.F.R. § 64.1100(b) provides:

The term *executing carrier* is generally any telecommunications carrier that effects a request that a subscriber's telecommunications carrier be changed. A carrier may be treated as an executing carrier, however, if it is responsible for any unreasonable delays in the execution of carrier changes or for the execution of unauthorized carrier changes, including fraudulent authorizations.

²⁰ See *Section 258 Order*, 14 FCC Rcd 1508, 1566-67 at para. 95.

²¹ See AT&T's response to the complaint at 2.

²² See *Petition* at 1-2. AT&T describes the events as follows: AT&T migrated certain customers on its network from trunk group 4E to an upgraded trunk group 5E, which impacted wholesale customers such as Primus, a long-distance reseller of AT&T's services. To ensure that Primus and other wholesale carrier customers' traffic was routed to their specific CIC after the migration, AT&T provided ASRs to Qwest, which identified the CICs and the associated traffic and instructed Qwest to route the wholesale traffic to the appropriate CIC(s). AT&T determined that Primus's CIC was not identified on certain ASRs submitted to Qwest and that, while it had automation software in place to ensure that its wholesale customers' CICs were included on the ASR to ensure proper routing of their traffic, there was a system error that prevented Primus's CIC from being loaded onto the ASR properly. AT&T states Qwest thus migrated traffic on AT&T's network from the 4E trunk group to the 5E trunk group but did not open Primus's CIC on the 4E trunk.

²³ See 47 C.F.R. § 64.1150(d).

²⁴ See *Division Order*.

8. Because AT&T's actions as an executing carrier violated the Commission's carrier change rules, we consequently find irrelevant AT&T's arguments in the *Petition* that it was not a submitting carrier and, thus, did not cause an unauthorized switch.²⁵ AT&T asserts that it was not a "submitting" carrier because it submitted carrier change requests to Qwest (Complainant's LEC) electronically via the Customer Account Record Exchange (CARE) system, and it did not try to do so through the ASRs provided to Qwest.²⁶ AT&T also cites a previous Division decision in which the Division concluded AT&T was not liable where AT&T demonstrated it did not submit a carrier change request, but instead billed the complainant for dial-around calls.²⁷ It asserts a similar finding is warranted here because AT&T did not submit a carrier change request on behalf of Complainant.²⁸ We disagree with AT&T's contention. Given that AT&T, acting as an *executing carrier*, violated the Commission's carrier change rules, it is irrelevant whether AT&T also violated these rules as a submitting carrier. Accordingly, we deny AT&T's *Petition*.

III. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and Sections 0.141, 0.361, 1.106 and 1.719 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.106, 1.719, the *Petition for Reconsideration* filed by AT&T on behalf of AT&T Corporation on February 25, 2008, IS DENIED.

10. IT IS FURTHER ORDERED that this Order is effective UPON RELEASE.

FEDERAL COMMUNICATIONS COMMISSION

Catherine W. Seidel, Chief
Consumer & Governmental Affairs Bureau

²⁵ 47 C.F.R. § 64.1100(a) provides:

The term *submitting carrier* is generally any telecommunications carrier that requests on the behalf of a subscriber that the subscriber's telecommunications carrier be changed, and seeks to provide retail services to the end user subscriber. A carrier may be treated as a submitting carrier, however, if it is responsible for any unreasonable delays in the submission of carrier change requests or for the submission of unauthorized carrier change requests, including fraudulent authorizations.

²⁶ See *Petition* at 4. AT&T asserts it never intended to switch any of AT&T's wholesale carrier customers' traffic to AT&T and AT&T's ASRs were not construed by Qwest as an attempt to do so. See *id.* We previously have stated that lack of intent does not alter a carrier's statutory liability under the Commission's carrier change rules. See *Acceris Communications Corporation; Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order on Reconsideration, 22 FCC Rcd 1551 (CGB 2007).

²⁷ *AT&T Corporation; Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 22 FCC Rcd 11995 (CGB 2007). See *Petition* at 4-5.

²⁸ See *Petition* at 5.